



C.R.P. (NPD) No. 1459 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.12.2021**

CORAM:

**THE HONOURABLE Mr. JUSTICE S.S.SUNDAR**

C.R.P. (PD) No.1459 of 2019

S.Muruganandham

...Petitioner

Versus

1. M.Santhakumar

2. S.Murthy

...Respondents

Civil Revision Petition is filed under Article 115 of the Civil Procedure Code, to set aside the order dated 30.11.2018 in I.A. No.209 of 2017 in O.S. No.677 of 2011 on the file of the Hon'ble Principal District Munsiff, Erode by allowing this revision.

For Petitioner : Mr. K.J.Parthasarathy

For Respondents : Mr. Kaithamalai Kumaran

### **ORDER**

This Civil Revision Petition is directed against the order passed by the learned Principal District Munsif, Erode dismissing the Interlocutory Application in I.A. No.209 of 2017 to condone the delay of 256 days in filing the petition to set aside the *ex parte* decree that was passed in O.S. No.677 of



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2011 on 20.04.2016

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2. The respondents as plaintiffs filed a suit in O.S. No.677 of 2011 for bare injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. It is admitted that the suit was decreed *ex parte*. The revision petitioner was set *ex parte* even earlier. The revision petitioner filed an Interlocutory Application in I.A. No.209 of 2017 to condone the delay of 256 days in filing the petition to set aside the *ex parte* decree. In the affidavit filed in support of the petition before the lower Court, the revision petitioner has stated that he was suffering from Jaundice and was taking treatment from country side medical practitioner. Financial constraints on account of loss faced by the petitioner in Poultry Farming is also stated as a reason for the delay.

3. Though the reasons stated by the petitioner are sufficient, the lower Court dismissed the application on the ground that the revision petitioner has not explained each day of delay with sufficient reasons. It was also pointed out by the lower Court that a connected suit filed by the petitioner in O.S. No.166 of 2010, was also dismissed for default and that the petitioner has not taken any steps to restore the said suit. The reasons assigned by the lower Court to dismiss the application filed under Section 5 of the Limitation Act are not sustainable.



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4. This Court finds that the petitioner has given sufficient reasons for the delay in filing the petition to set aside the *ex parte* decree. There is nothing on record to show that the reasons stated by the petitioner cannot be accepted. When the reasons are plausible, the Court is not expected to be pedantic. Non-appearance in this case cannot be treated as misconduct or gross negligence with an intention to cause delay or drag the proceedings. The Court is expected to be lenient in the matters like this to advance the cause of justice so that the parties will get a fair opportunity to defend their case on merits.

5. Accordingly, this Civil Revision Petition is allowed. No costs. The application filed by the petitioner in I.A. No.209 of 2017 stands allowed. Though the delay has been explained, this Court is of the view that the delay could have been avoided by the revision petitioner showing due diligence. Therefore, the petitioner is directed to pay a sum of Rs.2,000/- as cost to the respondents or their counsel either before this Court or the lower Court, within a period of two weeks from the date of receipt of a copy of this order.

**22.12.2021**

Index: Yes / No  
Speaking order / Non-speaking order  
bkn

**S.S.SUNDAR, J .,**



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Copy to:

The Principal District Munsif, Erode.

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